

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEW HAMPSHIRE

Gerard Joseph Bean

v.

Civil No. 07-cv-328-JL

Larry Blaisdell, Warden,
Northern New Hampshire
Correctional Facility

O R D E R

Gerard Bean's petition for a writ of habeas corpus (document nos. 8-10, 17, 20, 21, 28 & 46)¹ is presently before the Court for preliminary review to determine whether it is facially valid and may proceed. See Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts; see also United States District Court District of New Hampshire Local Rule 4.3(d)(2) (authorizing magistrate judge to preliminarily review

¹Bean filed his original petition on November 29, 2007 (document no. 8). Bean filed addenda to the petition on December 7, 2007 (document no. 9), December 10, 2007 (document no. 10), February 5, 2008 (document no. 17), March 4, 2008 (document no. 20), March 20, 2008 (document no. 21), and June 23, 2008 (document no. 28). This Court also requested documents regarding exhaustion of Bean's claims directly from the New Hampshire Supreme Court. Those documents have been received and docketed in this matter (document no. 46). All of these pleadings and documents will be considered, in the aggregate, to constitute the habeas petition in this matter.

pro se prisoner filings pursuant to 28 U.S.C. § 1915A). In a Report and Recommendation issued simultaneously with this Order, I recommended dismissal of two of the claims in Bean's petition. Further, as fully explained in the Report and Recommendation, I find that Bean has now demonstrated exhaustion of all but one of the remaining claims in his petition, and he must now therefore elect either to proceed with his mixed petition or to forego his presently unexhausted claim. If Bean elects to go forward with his petition unchanged, I will recommend that the petition be dismissed as mixed. If Bean elects to forego his unexhausted claim, I will direct that the exhausted claims be answered by the respondent.


Conclusion

Bean is directed to file a notice within thirty days of the date of this Order notifying this Court as to whether he wishes to proceed with his presently mixed petition unchanged, or whether he would like to forego his presently unexhausted claim. Failure to file this notice as directed will result in my recommendation that the petition be dismissed for failure to demonstrate exhaustion of each claim therein.

The Clerk's Office is directed to forward to Bean the paper

copy of the materials this Court has received from the New Hampshire Supreme Court, as they have already been docketed electronically in this matter (document no. 46), and as it does not appear that Bean possesses a copy of the documents.

SO ORDERED.



James R. Muirhead
United States Magistrate Judge

Date: February 3, 2010

cc: Gerard Joseph Bean, pro se

JM:jba